

The Orissa Gazette



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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th May 2009

No. 4117—li/1(B)-22/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2009 in Industrial Dispute Case No. 34/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Cadila Pharmaceuticals Ltd., Ahmadabad and its workman Shri Ashok Kumar Sahoo, represented through the Orissa Sales Representative Union, Cuttack was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 34 OF 2003

Dated the 31st March 2009

Present:

Shri M. R. Tripathy,
Presiding Officer, Labour Court, Bhubaneswar.

Between:

The Management of M/s Cadila Pharmaceuticals Ltd., Ahmadabad. . . First Party—Management

And

It Workman . . . Second Party—Workman
Shri Ashok Kumar Sahoo represented through the Orissa Sales Representative Union, Cuttack.

Appearances :

For the First Party—Management . . . Shri Mihir Mishra

Second Party—Workman himself . . . Shri A. K. Sahoo

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute between the parties to this Court for adjudication vide Order No. 7231—li/1 (B)-22/2003-L.E., dated the 30th July 2003 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of Reference is as follows :

“Whether the termination of service of Shri Ashok Kumar Sahoo, Senior Field Officer, Orissa, Cuttack (Workman) by the management of M/s Cadila Pharmaceuticals Ltd., Ahmadabad with effect from the 18th September 2001 is legal and/or justified ? If not, to what relief the workman is entitled ?”

3. The case of the workman Shri Ashok Kumar Sahoo in brief is that he joined as a Trainee Medical Representative under the control of the management on the 26th December 1975. In December 1976 his services were confirmed and he was posted at Cuttack. In January 1982 he was promoted to the post of Senior Field Officer, though the nature of duty assigned to him remained basically the same as before. He was an active union leader and was resisting the anti worker attitude and faulty policy decisions of the management. So, the management started to harass him in various way. On the 12th June 2001 the management issued a letter to him where in he was intimated that his services have been relocated to the headquarters of the management situated at Bhuj with effect from the 20th June 2001 and he received the said letter on the 17th June 2001. Subsequently on the 20th June 2001 he met with an accident and sustained injury, he was unable to work. Therefore he sent a telegram to the management for sanction of leave. Subsequently he also sent a medical certificate. On the 2nd July 2001 he sent a confirmation letter with regard to the telegram sent earlier and also sent another copy of the medical certificate. While the matter stood thus, he developed some post treatment complications and by the treating doctor he was advised for complete bed rest. So on the 10th July 2001 he sent another letter for grant of leave along with medical certificate. He did not receive any reply to his letters from the management. Subsequently he was attacked by Hepatitis for which he remained confined to the bed. While he was recovering from illness, he received a letter of the 10th August 2001 from the management regarding non-receipt of formal leave application from him and was asked to explain the cause of his absence. He received the said letter on the 17th August 2001 and clarified the matter. He again submitted the xerox copies of the medical certificates sent by him earlier. He also sent a representation on the same day i.e. on the 17th August 2001. While he was waiting for reply to his aforesaid letters and representation dated the 17th August 2001, he received a letter of termination of the dated the 18th September 2001 from the management. Thereafter he sent reply on the 8th October 2001 expressing his anguish over the unjustified action taken by the management against him. He waited for three weeks but did not receive any reply from the management, so he raised an industrial dispute before the Assistant Labour Officer, Cuttack

through the union on dated the 1st November 2001. Subsequently on the 21st November 2001 he received a calculation sheet regarding the amount payable by the management towards full and final settlement of his dues. He was advised by the management to return back the advance stamp receipt after putting his signature thereon. Subsequently he received a cheque for Rs. 50,678 towards full and final settlement of his dues. According to him prior to termination of his service the management had neither conducted any disciplinary proceeding nor followed Section 25-F of the Industrial Disputes Act, 1947. Thus the termination of his services is illegal and unjustified.

4. The management in the written statement has submitted that a sales promotion employee is not a workman within the meaning of the definition of 'workman' as provided in the Industrial Disputes Act, 1947. Moreover the workman of the present case was working as a senior field officer. As such, he was employed in a supervisory capacity and discharging the function of managerial in nature. The management has admitted that initially he was appointed as Trainee Medical Representative on the 26th December 1975 and Senior Field Officer with effect from the 1st January 1982. According to the management, the present reference is not maintainable on the ground of jurisdiction, since the headquarters of the company is situated at Ahmadabad i.e. in a different State. According to the terms and conditions of the appointment of the workman, the management was competent to transfer the workman to any part of India and the workman was required to join at the new headquarter within 10 days from the date of receipt of transfer order. It was further stipulated in the appointment letter that failure to take charge within 10 days at the new station would be considered as an act of abandonment of service. The business of the management in Orissa was closed in the year 2001 and therefore the workman was directed to report at the headquarter of the management at Bhuj vide letter dated the 12th June 2001. But the workman did not join at Bhuj within 10 days from the date of receipt of the transfer order rather he sent a telegram on dated the 20th June 2001 seeking leave due to some accident. But he did not submit any leave application with medical certificate and therefore he was directed to explain his conduct vide letter dated the 10th August 2001. Instead of justifying sanction of medical leave, the workman sent another letter on the 17th August 2001 stating therein that he was infected with hepatitis and demanded salary for the month of June and July 2001. He further sought for a clarification regarding Voluntary Retirement Scheme of the management and therefore it was clear that he was no more interested to join at Bhuj. Therefore the management had no other option but to issue a letter on the 18th September 2001 to terminate his services according to the terms and conditions of the appointment letter. On the 21st November 2001 a sum of Rs. 50,768 was paid to the workman by cheque towards full and final settlement of his dues. The workman received the said amount and thereafter raised a dispute before the District Labour Officer. Hence for all the above reasons he is not entitled to get any relief.

5. The workman filed a rejoinder refuting the allegations made in the written statement by the management.

6. The following issues were framed :

ISSUES

- (i) "Whether the termination of services of Shri Ashok Kumar Sahoo, Senior Field Officer, Orissa, Cuttack (Workman) by the management of M/s Cadila Pharmaceuticals, Ahmadabad with effect from the 18th September 2001 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?"

7. In order to substantiate his claim, the workman examined himself as W. W. 1. The management also examined a witness who is working as Area Business Manager under the control of the management as M.W. 1.

FINDINGS

8. *Issue Nos. (i) and (ii)* : Both the issues are taken up together for the sake of convenience.

According to the management the headquarter of the management is situated at Ahmadabad and as per the appointment letter for all purposes the Courts of the Ahmadabad shall have the jurisdiction. Therefore the reference made by the State of Orissa to this court is not maintainable. In this regard the workman has relied on a decision of the Hon'ble Apex Court reported in AIR 1967 Supreme Court 1040 in the matter of workmen of Shri Ranga Vilas Motors (P) Ltd., Appellants verus Shri Ranavilas Motors (P) Ltd. and others respondents. Perused the same.

Admittedly when the dispute arose the workman was working at Cuttack which is situated within the State of Orissa. So I find no merit in the objection raised by the management with regard to maintainability of the reference by the State of Orissa to this Court. Earlier the management had prayed to this Court to decide the matter of jurisdiction as a preliminary issue and my predecessor had passed an order on the 11th January 2007 wherein the prayer of the management was rejected.

9. It is stated by the management that the workman was working as a Senior Field Officer and a Sales Promotion Employee is not coming within the meaning of 'workman' defined in the Industrial Disputes Act, 1947. It is further stated by the management that the workman was employed in a supervisory capacity and he was discharging the function mainly of managerial in nature, therefore he is not a workman. In this context the workman has relied on a decision reported in 2001 LLR 83 in the case of Rajasthan Medical and Sales Representatives' Union and others versus Industrial Research Institute P. Ltd. and others. In the said case at Para. 11 it was held as follows :

" In view of the above said discussion, the special appeal is allowed and it is held that the order of the learned single Judge in the case cannot be upheld and the impugned award passed by the Labour Court-cum-Industrial Tribunal, is set aside and it is held that the medical representatives do fall under the definition 'workman' after coming into force the SPE Act as amended without

a ceiling on their wages except when they are employed or engaged in Supervisory capacity or in Managerial or Administrative capacity with the direction that the concerned Labour Court-cum-Industrial Tribunal shall decide the reference on merits.”

Admittedly the workman was getting a salary of more than Rs. 1,600 per month at the time of termination of his service, So let us now find out the nature of job he was performing.

M. W. 1 during the time of his cross-examination has stated that the job of a Senior Field Officer was to help the Area Manager in the matter of development of business of the Company and to properly train the trainee Field Officer working under him and thus his work is Supervisory in nature. But in the subsequent sentence he admitted that he cannot say the name of any Junior Field Officer trained by the workman in the present case. He further admitted that he cannot say if the Senior Field Officer can take disciplinary action against his subordinates or sanction their leave. He also admitted that the job of a Senior Field Officer includes meeting the Doctors in his area for promotion of business of the management. He could not say if the junior Field Officers were reporting to the workman or not. According to him the nature of job of a Junior Field Officer does not change when he is promoted to the rank of Senior Field Officer. Finally he admitted that the workman in his capacity as Senior Field Officer did not have any Managerial and Administrative power. In view of the aforesaid admissions of the management witness No. 1 I am not able to agree with the submission of the management that the job of the workman of the present case was either Supervisory in nature or Managerial in nature.

10. It is admitted by the management that the workman had sent a telegram on the 20th June 2001. The workman has filed a copy of the said telegram which reveals that he had met with an accident and was unable to walk. The workman has also filed copies of letters and medical certificates sent by him to the management subsequently. According to the management those letters and medical certificates were never received from the workman. If that was so, the management could have initiated a disciplinary proceeding and thereafter could have taken appropriate action for disobeying the orders of the authority, misconduct etc. But admittedly no charge was framed against the workman before termination of his service. Also no domestic enquiry of any nature was held before he was removed from service. No doubt there is a condition in the appointment letter marked as Ext. 2 which reads as follows :

“XX XX XX XX XX XX”

- (g) During the training period or after your selection as our Representative, your services are transferable to in any part of India at the sole discretion of the firm. You may be transferred from one area to the other and your H. Q. may be changed as and when found necessary by the firm. In case of your transfer, you shall take charge and resume your duties at your new H.Q. within ten days from the date of receipt of your order. Your failure in taking charge at your new H. Q. within 10 days shall be considered as abandoning your duties and breach of this agreement, and shall render you liable for discontinuation of your training or termination of your services, as the case may be, automatically.”

But in the present case it is pleaded by the workman that he was unable to walk due to an accident at the relevant time and therefore, it was not practicable for him to travel a long distance i.e. from Cuttack to Bhuj. It is not that he remained silent and slept over the matter after receipt of the transfer order from the management. He might have taken an attempt to avoid his transfer from Cuttack to Bhuj but unless that was established in a domestic enquiry, it was not legal for the management to take an unilatera action against the workman. If the management was dis-satisfied with the action of the workman and if the management was of the view that a false plea has been taken by the workman, the management could have taken appropriate action against him after affording reasonable opportunity to the workman. But as it is seen, no opportunity was given to the workman before a major punishment like termination of his service was inflicted on him. The action taken by the management clearly amounts to retrenchment and therefore, the management was duty bound to comply Section 25-F of the Industrial Disputes Act, 1947, but admittedly Section 25-F of the Industrial Disputes Act, 1947 was not complied and therefore it can be safely concluded that the termination of service of the workman was illegal and unjustified. Thus the workman is entitled to be reinstated in service. In this meanwhile almost 7 years have already passed. In view of the puculiar facts and circumstances of the present case, I think it will not be reasonable to direct the management to pay back wages for the entire period. In my opinion, the ends of justice will meet if the management is directed to pay a lump sum amount of Rs. 50,000 to the workman towards back wages. Accordingly both the issues are answered.

11. Hence ordered :

The termination of services of Shri Ashok Kumar Sahoo, Senior Field Officer, Orissa, Cuttack (Workman) by the Management of M/s. Cadila Pharmaceuticals, Ahmedabad with effect from the 18th September 2001 is illegal and unjustified. The workman Shri Sahoo is entitled to be reinstated in service with a lump sum amount of Rs. 50,000 towards back wages. The management is directed to implement the Award within one month from the date of its publication in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
31-3-2009
Presiding Officer
Labour Court, Bhubaneswar

M. R. TRIPATHY
31-3-2009
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government